

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-124-W/S - ORDER NO. 2002-533

JULY 30, 2002

IN RE:	Application of Utilities Services of South)	ORDER
	Carolina, Inc. for Approval of the Transfer of)	GRANTING
	the Water and Sewer Facilities, Territory, and)	TRANSFER
	Certificate of Utilities of S.C., Inc. and S.C.)	
	Water and Sewer, LLC.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed by Utilities Services of South Carolina (Utilities Services) on April 5, 2002, for approval of the transfer of water and sewer facilities, territory, and certificates of Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC. Thereafter, a Petition to Intervene Out of Time was filed by Sandy Springs Water District (Sandy Springs) and a Petition for Expedited Consideration and Response to Petition to Intervene Out of Time was filed by Utilities Services. Sandy Springs also filed a Response/Reply to the Petition for Expedited Consideration.

Petition to Intervene Out of Time

In its Petition to Intervene Out of Time, Sandy Springs states that it is a body politic and corporate and a political subdivision of the State of South Carolina, duly created, validly existing, and in good standing under the Constitution and laws of the State of South Carolina. Additionally, Sandy Springs furnishes water to individuals, farms, businesses, corporations, and other entities within its district. The record reveals that Sandy Springs supplies water for domestic, commercial, and other uses within its

district located in Anderson County, South Carolina. Moreover, two of the water systems proposed to be transferred to Utilities Services are within Sandy Springs' district and can be more readily and reasonably serviced by Sandy Springs. The two water systems located in Sandy Springs' district are Sherwood Forest Subdivision and Calhoun Acres Subdivision. Sandy Springs states that residents of these subdivisions approached Sandy Springs and requested that Sandy Springs provide water to them.

In support of its Petition to Intervene Out of Time, Sandy Springs asserts that it would be in the public interest of the residents of Sherwood Forest Subdivision and Calhoun Acres Subdivision that Sandy Springs be allowed to provide water to them, and Sandy Springs should be allowed the opportunity to serve the residents within their district. Moreover, Sandy Springs argues that it was not aware of the pending application until contacted by the residents within their service area, and, therefore, a timely request for intervention could not be made. Moreover, Sandy Springs states that it has an interest since these residents have requested that they be served by Sandy Springs. For these reasons, Sandy Springs requests that it be allowed to intervene out of time.

Petition for Expedited Consideration and Response to

Petition to Intervene Out of Time

In its Petition for Expedited Consideration, Utilities Services states that the transaction by and between Utilities Services, Utilities of South Carolina and South Carolina Water and Sewer was executed in December 2001. According to the Petition, the Purchase and Sale Agreements originally contemplated a closing date at the end of

June 2002. Therefore, Utilities Services opined that time is of the essence in closing the transaction transferring the subject systems.

Regarding Sandy Springs Out of Time Petition, Utilities Services argues that at no time has Sandy Springs contacted the current system owners about a potential purchase of the subject systems. Utilities Services also states that while Sandy Springs' interest in serving the two subdivisions is respected, the Petition to Intervene Out of Time fails to state or allege any harm to those customers or the public interest should the Commission approve the Application. Additionally, Utilities Services asserts that in the event the Application is approved, Sandy Springs is free to begin discussions or negotiations with Utilities Services concerning a purchase of the systems serving the Sherwood Forest and Calhoun Acres subdivisions. Furthermore, Utilities Services argues that only after there is an agreement for the sale of the subdivisions' systems should the Commission consider whether there is a public interest served by the transfer to Sandy Springs. Utilities Services opined that Sandy Springs is asking the Commission to place in jeopardy this transaction in favor of a "possible" future offer by Sandy Springs to purchase the Sherwood Forest and Calhoun Acres systems. It is Utilities Services' position that Sandy Springs' Petition completely fails to offer any excusable justification for its failure to timely file a petition to intervene. In sum, Utilities Services requests that the Petition to Intervene Out of Time be denied.

Response/Reply to Petition for Expedited Consideration

Sandy Springs also filed a Response/Reply to Utilities Services' Motion for Expedited Consideration. In its Response/Reply, Sandy Springs states that the residents of Sherwood Forest Subdivision and Calhoun Acres Subdivision are in its district. Sandy Springs also argues that residents of these two subdivisions have made repeated requests to be served by Utilities Services or its predecessor since 1996. Further, according to the Response/Reply, over one hundred families in said subdivisions have signed petitions requesting that Sandy Springs intervene and purchase the systems servicing their subdivisions. Moreover, according to Sandy Springs, only a handful of residents in these subdivisions have not signed these petitions.

The Response/Reply also states that Sandy Springs has made attempts to purchase these systems since 1996, and only last year after a notice of tax sale was received, Sandy Springs' Chairman called the current owner and inquired as to the possibility of a sale. According to the Response/Reply, the current owner was advised at that time that Sandy Springs was interested in acquiring these systems on behalf of the residents who are citizens in their districts.

Discussion of Petition to Intervene Out of Time

We have reviewed Sandy Springs' Petition to Intervene Out of Time. After reviewing this Request, we find that the Petition to Intervene Out of Time should be denied. It is within the discretion of this Commission to either grant or deny a Petition to Intervene Out of Time. We do not think the public interest is harmed by denying Sandy Springs' Petition to Intervene Out of Time. It is our opinion that the residents in

Sherwood Forest Subdivision and Calhoun Acres subdivision, who did not intervene in this matter, have standing to intervene in the instant docket. However, it is questionable as to whether Sandy Springs has standing to intervene in this case. Nevertheless, we find that Sandy Springs can enter into negotiations with any future owner of the systems serving the Sherwood Forest and Calhoun Acres subdivisions once we dispose of this case. Sandy Springs is therefore not prejudiced by this Commission's denial of its Petition to Intervene Out of Time.

Discussion of Motion for Expedited Review

Utilities Services filed a Petition for Expedited Consideration of its Application for approval of the transfer. By its Petition, Utilities Services requested that the Commission grant expedited review of its Application; thereby waiving any requirement of a formal hearing on the Application. After reviewing the record, we find that the Petition for Expedited Review and the request for approval of the transfer of water and sewer facilities to Utilities Services should be granted.

In support of its Application, Utilities Services stated that the Application for Transfer was filed on April 5, 2002, and all parties who have timely moved for intervention were withdrawing their petitions. Further, Utilities Services argued that the Purchase and Sale Agreements originally contemplated a closing date at the end of June 2002; time is of the essence in closing the transaction transferring the subject systems, according to Utilities Services. In support of the Motion and for consideration of the Application, Utilities Services filed the verified testimony of Willard S. Detweiler, President and Chief Executive Officer of Utilities of South Carolina, Inc. and South

Carolina Water and Sewer, LLC and Carl Daniel, Group Vice President and Regional Director of Operations for Utilities, Inc.

Those persons who timely filed petitions to intervene have now withdrawn their petitions and we have denied the only remaining petition to intervene out of time in this docket. 26 S.C. Regs. 103-504 and 103-704 requires a due hearing be held regarding the sale, transfer, or acquisition of a water or sewerage utility system. However, Commission Regulations 103-501(3) and 103-701(3) provide that the Commission may waive its rules and regulations in any case where compliance with any of its rules introduces unusual difficulty and the Commission finds that such a waiver is in the public interest. The Commission finds that a waiver of the formal hearing is in the public interest and will therefore consider the Application without the necessity of a formal hearing. A public hearing is unnecessary as no intervention now exists in this docket. Furthermore, Utilities Services is willing to operate systems which Utilities of South Carolina and South Carolina Water and Sewer seek to sell. The record reveals that the transaction between the Companies was executed in December 2001. The Purchase and Sale Agreements originally contemplated a closing date at the end of June 2002. Further, the record reveals, as discussed below, that the transfer is in the public interest and is not detrimental to customers.

The verified testimony submitted by Willard S. Detweiler, President and Chief Executive Officer of Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC, reveals that both of these companies support the approval of the agreements for transfer of their assets and operations. Utilities of South Carolina, Inc. is a South

Carolina corporation, which operates water systems and sewer systems in various areas of the State subject to the jurisdiction of the Commission. Further, South Carolina Water and Sewer, LLC, is a South Carolina limited liability company, which also operates water and sewer systems within the State subject to the jurisdiction of the Commission.

According to Detweiler, Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC believe that the approval of the transfer of their assets and operations to Utilities Services of South Carolina, Inc. will best serve the public interest and enable the customers of the systems to receive reliable and economical water and wastewater services under the rules and regulations of the Commission. Both Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC support Utilities Services in requesting the Commission to approve the transfer of assets and operations in the instant docket.

Carl Daniel, Group Vice President and Regional Director for Utilities, Inc., with oversight authority of certain wholly-owned subsidiaries of Utilities, Inc., also presented testimony. The record reveals that Daniel, as Group Vice President and Regional Director of Operations, will have the same oversight responsibility for Utilities Services. As Group Vice President and Regional Director of Operations, Daniel is responsible for making sure Utilities, Inc.'s customers receive the best possible service. He is responsible for all operating personnel, facilities, maintenance and capital projects. Additionally, Daniel is responsible for communications with state and federal regulators, including state utility commissions, regarding environmental and drinking water standards as well as other operational issues.

The purpose of Daniel's testimony is to provide the Commission with a brief overview of the corporate entity purchasing the affected systems and an overview of Utilities, Inc.'s South Carolina operations, including Utilities, Inc.'s continued efforts to provide its customers with the best possible water and sewer utility service. Furthermore, Daniel provided testimony in support of the Application for transfer of the assets of Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC as being in the public interest and best interests of the affected customers.

According to the testimony, Utilities Services of South Carolina has been established by Utilities, Inc. to hold the assets purchased from Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC. Utilities Services will be a wholly-owned company of Utilities, Inc., which is also the parent company of five other wholly-owned water and sewer companies operating in South Carolina and subject to the jurisdiction of the Commission and the South Carolina Department of Health and Environmental Control. The record reveals that the wholly-owned subsidiaries are United Utility Companies, Inc., Carolina Water Service, Inc., Tega Cay Water Services, Inc., South Carolina Utilities, Inc., and Southland Utility Company, Inc. Daniel also testified that if Utilities Services' Application pending before the Commission is approved, personnel from Utilities, Inc. and the South Carolina owned entities will assist in integrating the affected systems into the overall operations of Utilities, Inc.

Regarding customer satisfaction, Daniel testified that Utilities, Inc. is proud of its commitment to ensuring that all of its customers receive quality utility service.

According to the testimony, Utilities, Inc. companies hire and maintain a highly qualified

and professional staff of individuals both in the office and in the field. Daniel stated that Utilities, Inc. continues to make customer satisfaction the primary responsibility of each and every employee.

Daniel outlined a few of the ongoing programs that might be implemented at Utilities Services to help ensure that customers receive quality utility service. According to the testimony, Utilities, Inc.'s companies hold periodic staff meetings to specifically address service concerns, as well as to increase employee sensitivity to customer satisfaction. According to Daniel, these regular meetings also serve as an opportunity to reinforce Utilities, Inc.'s customer service philosophy, as well as to keep staff focused on what is important – customers. Next, Daniel stated that Utilities, Inc. provides continuing education programs for all employees, which include classes routinely conducted by both Utilities, Inc. staff, as well as outside experts. To ensure that Utilities, Inc.'s customers are provided the best possible service and also to ensure that company-wide facility and safety standards are properly maintained, Daniel testified the following programs exist: a capital improvements program, as well as ongoing operational programs such as routine testing, and periodic water main flushing to improve water quality, the use of sequestering agents to reduce the effects of minerals which may occur naturally in ground water, the cleaning of 10% of sewer collection mains each year to minimize the potential for back-ups, and a 24-hour-a-day, seven-day-a-week on-call emergency service. According to Daniel, that same commitment to customer satisfaction will be employed at Utilities Services to make sure that the affected customers are receiving quality services that meet Utilities, Inc.'s standards.

The testimony also reveals that it is in the best interests of the affected customers and the public interest that the Commission approves the transfer of these systems to Utilities Services. Daniel opined that Utilities, Inc. will be able to provide long-term stable service to the affected customers. Further, the testimony states that Utilities, Inc. has been in the utility business for more than thirty years and currently provides water and/or wastewater services to approximately 243,000 customers in sixteen states. Moreover, according to the testimony, Utilities, Inc.'s experience and knowledge in the utility business is among the most extensive and its strong existing presence in South Carolina will benefit the affected customers of these systems. In sum, Daniel testified that Utilities, Inc. believes that it will be in the best interests of the customers of these systems for the Commission to approve the Application for transfer of systems in order for those customers to receive safe and reliable water and wastewater services. Finally, the Application seeks the Commission's approval of the transfer of these systems under the current and existing rate schedules, as approved by the Commission.

The record also reveals that U.S. Utilities, the Department of Health and Environmental Control (DHEC), and Utilities Services have entered into a Stipulation. The Stipulation states that currently U.S. Utilities is delinquent in the payment of operating fees for its water and sewer systems. U.S. Utilities is responsible for paying, to DHEC, operating fees for each system pursuant to the State's Environmental Protection Funds Act, Section 48-2-10 *et. seq.* (Supp. 2001), and the Environmental Protection Fees regulations administered by DHEC. Additionally, DHEC has assessed monetary penalties against U.S. Utilities as a result of the non-payment of fees and compliance with

those applicable statutes and regulations. Further, the Stipulation provides that Utilities Services and U.S. Utilities agree that the back-owed operating fees will be paid to DHEC as part of the closing of the purchase and sale transaction by and between Utilities Services and U.S. Utilities. Moreover, the operating fees will be paid out of the sales proceeds. The Stipulation also provides that payment will be made to DHEC by hand-delivery within twenty-four (24) hours following the closing of the purchase and sale transaction or by overnight mail, sent the day of said closing. In the Stipulation, DHEC agreed to withdraw as an intervenor; however, DHEC did not waive any claims or rights regarding penalties owed by U.S. Utilities and expressly reserved the right to enter a separate agreement with U.S. Utilities concerning the payment of penalties, to exercise any other rights against U.S. Utilities, and to seek payment of those penalties owed by U.S. Utilities. Finally, Utilities Services and U.S. Utilities agreed that the Commission's approval of the Application for transfer, if granted, should be contingent upon U.S. Utilities' payment of all operating fees owed to DHEC.

We have examined the record in this case and agree that the proposed transfer of the water and sewer facilities, territory, certificates, permits, powers and privileges from Utilities of South Carolina, Inc. and South Carolina Water and Sewer, LLC to Utilities Services is in the public interest and should be approved. The record clearly states that Utilities of South Carolina and South Carolina Water and Sewer, as the sellers, believe that the approval of transfer of their assets and operations to Utilities Services will best serve the public interest and enable the customers of the systems to receive reliable and economical water and wastewater services under the rules and regulations of the

Commission. We agree with this assertion. Moreover, the record clearly indicates that Utilities Services was created by Utilities, Inc. to hold the assets purchased from Utilities of South Carolina and South Carolina Water and Sewer. Utilities Services will be a wholly-owned company of Utilities, Inc. Utilities, Inc. has been in the utility business for more than thirty years and currently provides water and/or wastewater services to approximately 243,000 customers in sixteen states. Utilities Services will serve the customers of South Carolina Water and Sewer, LLC and Utilities of South Carolina, Inc., under the current and existing rate schedules, as approved by the Commission.

Furthermore, the testimony states that Utilities Services is committed to ensuring that all of its customers receive quality utility service. The proposed transaction is therefore approved as filed.

JULY 30, 2002

PAGE 13

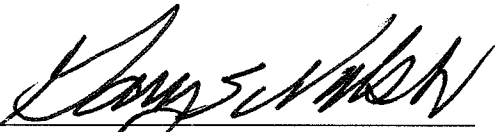
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)